



COURT REPORTERS BOARD OF CALIFORNIA
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October 8, 2004

ED HOWARD
Chief Consultant
Joint Committee on Boards,
Commissions, and Consumer Protection

Dear Mr. Howard:

Per your request, the Court Reporter Board's responses follow the Committee's questions. The hardcopy with attachments will follow in a separate document.

1. The regulation cited at page 5 prohibiting deposition summaries (citation to C.C.R. 2427) could not be found. Please provide a copy and a rationale for the regulation.

The correct code section is CCR 2474. The purpose of the regulation is to prohibit the preparation of deposition summaries by shorthand deposition reporters after the conclusion of a deposition that the reporter has recorded. The regulation eliminates the possibility that reporters may appear to jeopardize their duty to be impartial. It clarifies that preparing deposition summaries is a violation of B&P 8025.

2. Please explain what if any benefit exists to the Board of participating in the Reporting of the Record Task Force (identified as a "significant" Board activity for the last four years).

The Reporting of the Record Task Force identified nine separate and distinct issues impacting the court reporting profession as follows:

1. Standardization of stenographic court reporting systems;
2. Uniformity of transcript formats;
3. Expanded use of court reporters' evidence and presentation technology;
4. Ownership of transcripts and related products;
5. Uniformity of transcription and other court reporting service fees;
6. Delivery, maintenance, and storage of transcripts via electronic and paper media, including access to reporters' notes;
7. Training of court reporters;
8. Review of provisions relating to court reporting of the Appellate Rules of the California Rules of Court and related statutes; and
9. Shortage of qualified court reporters including such issues as recruitment, retention, and the consequent need to develop criteria for the use of alternative methods of reporting and maintaining the record.

The Board has direct oversight authority for items #2, #5, and #6 above. As the state's consumer protection arm regarding the profession, it was important for Board issues to be heard at the table and for any Board position be considered during the discussion and subsequent recommendations of the Task Force. The chair of this task force was the Chief Justice of California. Membership included judges, attorneys and Certified Shorthand Reporters.

- 3. Please discuss what, if anything, the Board has done to address the phenomenon of “contracting;” that is, licensees or their employers entering into an ongoing agreement to provide special deposition services or prices undisclosed to or unavailable to the other side in a lawsuit. Please identify those states that have enacted statutes or regulations addressing the practice and summarize (briefly) the approach of each.**

The Board conducted a business study (see Sunset Report, Attachments, Part I, I-K) to determine the need of regulating court reporting businesses. Lacking sufficient evidence via complaints, the recommendation was to not pursue regulation at this time. The Board has held two town hall meetings to discuss and gather information relative to a professional code of conduct/code of ethics (see attachment). This avenue may produce additional information relative to that practice. The attached chart reflects other states actions in this area.

- 4. Please elaborate on the Board’s loan to the General Fund. How was this accomplished? Is there a formal agreement? If so, please provide a copy along with any other related documents. When will it be repaid? Please elaborate upon the terms of repayment. Please also elaborate on how the loan was requested and negotiated – the process, who approached who, how was the result determined, etc.? If the repayment is based upon “need,” how has the Board defined “need”? And under the terms of the loan, who gets to define “need”? Given that the Board’s “resources have been limited” (page 40), explain why the Board does not “need” repayment now?**

The Board's loan to the General Fund was accomplished through the legislative budget process. Terms of repayment include a verbal understanding that when the Board's reserves are limited, that the Department of Finance will authorize repayment. The Board has sufficient reserves this year to cover its expenses. The Board has submitted BCPs for expenditure authority for next fiscal year which will increase the need for funding. Funds will need to be repaid to the Board next fiscal year, if the BCPs are approved.

- 5. The Report mentions the absence of a statutory reserve level. Should there be one? Please explain your answer.**

The Board's budgetary authorities are maintained through the Department of Consumer Affairs. It is not known if a “minimum” statutory reserve level is needed. A minimum reserve level might remove some flexibility of the Board to use its funds as needed.

- 6. The Report lists the number of times TRF requests were denied. Can you elaborate on the standards by which the Board determines whether to grant or deny such requests and the process by which they are determined? Please provide several examples of requests that were denied and explanations why.**

A case is usually denied because the applicant does not meet the legal definition of an applicant, or the charges requested are not covered by the TRF law. B&P Section 8030.4 (e) defines the term applicant. It states in part, *"The term "applicant" shall not include persons appearing pro se to represent themselves at any stage of the case."* B&P Section 8030.6 (a) through (c) describes the items an applicant can submit for reimbursement. Examples attached.

- 7. Why are there differences between the dictation portions of the California and National tests? Please justify why California’s dictation tests differ from the National tests. (See page 19) If California adopted the National dictation tests, please speculate on the impact such a move would have on pass/fail rates.**

It is not known the basis for the development of the National test. California testing is developed and administered according to legally defensible psychometric standards, as outlined in the Boards' latest

Occupational Analysis. Testing requirements for California are outlined in statute. Since the National test has no entry requirements for taking the test, and the administration of the National test is different from the California exam, we are unable to predict what the impact would be to applicants if California were to adopt the National exam.

- 8. On page 20 it is unclear whether the Board has in the last sunset cycle made any movement toward CE. If so, please confirm. If not, please elaborate on any steps taken beyond a commitment to discuss the issue at future meetings (page 20).**

Since the last sunset review, the Board has not formally discussed the merits of Continuing Education. The previous two administrations were not in support of starting new CE programs, so the issue was not reviewed.

- 9. Should there be requirements for “local officials or organizations or other professionals to report violations” (page 21)?**

It is unknown if this should be a requirement. State courts do report violations of California codes relating to the timely filing of certain types of transcripts. Example attached.

- 10. Please elaborate on the “mediation” process: who conducts the mediation (i.e., is it a formal mediation with a trained mediator); how does the Board determine whether a complaint should be subject to mediation and how are employees trained or informed of those standards; where is the mediation conducted/how is it conducted; what are the typical results of mediations (provide real world examples); and under what circumstances will the results or fact of mediation be disclosed to the public?**

The mediation process consists of the enforcement analyst calling the reporter, identifying the complaint (overbilled services) and asking the reporter to do a word count or other method to justify the costs of the billed transcript. The reporter will generally refund the amount in question, if it is expedient to do so. The case is closed, with all parties notified. In another example, a late transcript is due to a firm, the analyst calls the reporter, and determines the reason for the late transcript. The analyst confirms a projected due date for the transcript, and identifies that date to the firm. The firm agrees to the date, and the reporter submits proof of completion to the Board. The case is closed, and both parties are notified of the action. If the results are the basis for an accusation against the licensee, the public is so informed.

- 11. How does the Board determine whether a “complaint warrants a more thorough background investigation” and how are employees trained to recognize such complaints?**

In those instances where the Board cannot find the reporter, or obtain the needed information through paperwork filed with a court, then an investigator can be used to gather the needed data.

- 12. How does the Board track complaints, mediations, warning letters, and other information to identify those licensees that might be a risk of future problems?**

Each licensee has a unique identifying license number that is good for life, if the license is renewed on a timely basis. The Board has all of these files. When a complaint is filed, a log is updated with the background information, and the file is pulled. Copies of complaints are kept in the licensee file. The file is reviewed for each complaint, prior to a course of action being determined.

13. Please explain the observation at page 23 that the Board was able to forego investigations because the AG was able “to obtain sufficient documentation from the courts.”

For the cases pursued to an accusation in 2002/03, the court provided documentation concerning an official reporter’s work product. The court documentation was sufficient to be used as evidence in the hearing.

14. In the chart on page 24, please explain why pre and post accusation data is not available for 2002-2004.

The information was not available at the time of the report. The updated chart is attached.

15. Why has the Board not issued any citations or fines to schools and instead relied entirely upon warning letters? Please provide an example of a typical warning letter. Please provide an example when the Board would consider it appropriate to levy a citation or fine against a school.

The warning letters have produced satisfactory compliance with the noted deficiency. An example is attached. A citation would be appropriate for multiple and/or frequent violations of code.

16. Please explain the comment (page 25) that the Board’s cite and fine authority was increased to \$5,000 but that DCA is “considering” regulatory language that would “authorize” this higher level. If the statute is clear, why is DCA regulatory language required to “authorize” that which the statute already authorizes? And why is it DCA – not the Board’s – regulatory language?

The DCA issued the attached memorandum dated August 12, 2004, that outlines recommended criteria for the adoption of regulations for the increased fine amount. CCR 2480(b) states that the fine shall not exceed \$2500. The Board has not met since this memo to address the recommendations provided by DCA, and will need to change its regulatory authority to do so.

17. Please explain how the Board knows that there have been no repeat complaints against licensees who have received warning letters (e.g., explain how the Board would catch such a complaint if it came in.) Similarly, how does the Board make sure that complaints against fictitious names and court reporting firms are traced to individual licensees for tracking purposes, if the complaint actually arises as a result of acts by a licensee?

The Board maintains every licensee file. Each file contains information relative to that licensee, regardless of the source. Each licensee file is reviewed on receipt of information relative to that file, prior to initiating any review of the complaint.

18. Please describe the unique cases mentioned on page 28. Specifically, explain the Court of Appeal case (what it was about, the result) and the “all day” hearing (same). Please provide copies of decisions.

The Board obtained a judgement against a licensee for violation of B&P Code 8025, unprofessional conduct, based on his failure, as a firm owner, to pay his employees. The licensee appealed, based on the theory that “non-payment” of reporters, as a firm owner, was not in the conduct of business as a CSR, therefore, the Board could not discipline him. The court agreed. Had the Board prevailed, the licensee would have paid cost recovery.

19. How does the Board determine which cases “merit” (page 29) cost recovery?

The Board requests cost recovery for every case; the ALJ determines which case will merit the recovery.

20. B&P Code section 8010 does not appear to permit the Board to disclose letters of reprimand, warning letters, or mediations, no matter how many. Is this consistent with the DCA's disclosure principles or the Board's? Should the public be informed of such Board actions? If so, why? If not, why not?

B&P Code Section 8010 does not permit disclosure unless it results in an accusation with the AG. This is not consistent with the Department's disclosure policy. The DCA's policy was discussed at the December 2003 Board meeting. After reviewing the information, a motion was made to table this item until a later date.

21. Please explain the entry called "Settlement Decisions" on page 30 – what are "Settlement Decisions" and how do they relate to mediations?

The Board interpreted this entry to mean the decisions made as a result of a hearing, which would be after an accusation was filed. Under B&P 8010, this information can/is released to the public.

22. Are licensees able to renew on-line? If not, please explain why not.

The Department of Consumer Affairs maintains the technology infrastructure and fiscal authorities over the CSR Board. The Board has requested the ability to provide online licensing but is not yet scheduled to receive that function. It is unknown if the current IT system will support additional DCA Boards involvement in this matter.

23. Please explain what is meant by warning letters that are "resolved" (page 38).

The warning letter (example attached) describes a legal requirement that has not been met. A follow-up is conducted after the due date in the letter. All of the follow-ups have produced compliance.

24. Please elaborate on the Cease and Desist to "a school" (page 38). Which school and why? Why was no citation or fine levied? What is the status?

As a result of the last sunset review, B&P Code Section 8025(y) was added to eliminate the (then) current practice of having two "qualifier" exams passed by each student, prior to taking the CSR license exam. The new law now states that only one "qualifier" exam, passed by the student, prior to taking the CSR license exam. A student complaint was filed that their school was continuing to require two qualifying exams. The Board's EO sent the school a letter requesting additional information and found written substantiation by the school to support the student's claim. A Cease and Desist letter was sent to the school; whereupon they immediately stopped the practice. A citation was not issued, as compliance was achieved.

25. The MOU with the BPPVE provides that the Bureau shall assume "sole" responsibility for various tasks. Please explain the Board's view of this arrangement in light of the Sacramento Bee's August 18, 2004 report (<http://www.sacbee.com/content/news/education/story/10417819p-11337457c.html>)

The MOU with BPPVE reaffirms that the BPPVE will continue to have oversight over schools of court reporting where the BPPVE maintains statutory authority to do so. The MOU also reaffirms that the CSR Board will continue to have oversight over schools of court reporting where the CSR Board maintains statutory authority to do so. The MOU notices each agency to continue to notify each other of activities (school reviews, complaints), which have occurred and is ongoing. It is unknown what the complete oversight responsibility of BPPVE is in regards to schools; but we hope that they are moving forward to correct any deficiencies noted by the article.

26. What steps does the Board take to notify the public of about unlicensed individuals who are caught reporting?

Under B&P Code 8027, only those complaints resulting in an accusation can be noticed to the public. All of the conditions met for disclosure are noticed on the Boards website.

Sincerely,

David E. Brown
Executive Officer
Court Reporters Board of California

Cc: Julie Peak, Chairperson
Kristen Tripeke, Department of Consumer Affairs